

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF SOUTH CAROLINA  
3                   CHARLESTON DIVISION

4                   UNITED STATES OF AMERICA         :  
5   :  
6                   vs.                                   :  
7   :  
8                   DYLANN STORM ROOF                 :  
9   2:15 - CR - 472

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11                   Telephone conference in the above matter held on  
12                   Tuesday, October 25, 2016, commencing at 11:30 a.m., before  
13                   Hon. Richard M. Gergel, in camera, in the United States  
14                   Courthouse, 83 Meeting St., Charleston, South Carolina,  
15                   29401.

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17                   APPEARED VIA TELEPHONE ON BEHALF OF THE UNITED STATES:

18                   JAY N. RICHARDSON, ESQ., 1441 Main St., Columbia, SC.  
19                   NATHAN WILLIAMS, ESQ., P.O. Box 978, Charleston, SC.  
20                   STEPHEN CURRAN, ESQ. and MARY J. HAHN, ESQ.,  
21                   601 D St. NW, Washington, DC.

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23                   APPEARED VIA TELEPHONE ON BEHALF OF THE DEFENSE:

24                   DAVID I. BRUCK, ESQ., Washington & Lee School of Law,  
25                   Lexington, VA.  
26                   KIMBERLY C. STEVENS, ESQ., 1070-1 Tunnel Rd.,  
27                   Asheville, NC.  
28                   SARA S. GANNETT, ESQ., 850 W. Adams St., Phoenix, AZ.

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30                   REPORTED BY DEBRA L. POTOCKI, RMR, RDR, CRR  
31                   Official Court Reporter for the U.S. District Court  
32                   P.O. Box 835  
33                   Charleston, SC 29402  
34                   843/723-2208

11:31:44AM 1                   THE COURT: For the record, this is the matter of  
2 United States versus Roof, 2:15-472.

11:31:52AM 3                   Could counsel identify themselves for the record,  
4 beginning with the Government counsel.

11:31:58AM 5                   MR. RICHARDSON: Yes. This is Jay Richardson, Your  
6 Honor. I've got Nathan Williams, Steve Curran, Mary Hahn, and  
7 hopefully in just a moment, Rich Burns, also on the phone.

11:32:07AM 8                   THE COURT: For the defense?

11:32:10AM 9                   MR. BRUCK: David Bruck for the defense; I have Kim  
10 Stevens in the room with me.

11:32:15AM11                  MS. GANNETT: Your Honor, this is Sarah Gannett; I'm  
12 also on the phone.

11:32:17AM13                  THE COURT: Good. Have all counsel received the  
14 letter from Dr. Dietz dated today, regarding his experience  
15 this morning at the jail?

11:32:32AM16                  MR. RICHARDSON: Yes, Your Honor.

11:32:33AM17                  THE COURT: Mr. Bruck?

11:32:34AM18                  MR. BRUCK: Yes, sir, we have.

11:32:35AM19                  THE COURT: Okay. For the record, that is document  
20 No. 503, which we have filed under seal. I would like the  
21 parties' response to what they would recommend the Government  
22 do with this development.

11:32:52AM23                  Government first.

11:32:55AM24                  MR. RICHARDSON: Your Honor, the Government's  
25 position is sort of twofold. First, we believe the Court's

1 order ought to govern, that the defendant in this case doesn't  
2 get to dictate or control the process under which he is  
3 examined. And so we think that's a sort of unfortunate choice  
4 that he's made, but it's a choice that he has made to refuse  
5 to cooperate and ignore the Court's order.

11:33:20AM 6                 Secondarily, if the Court does consider acceding to the  
7 defendant's demands, then the Government needs to have an  
8 opportunity to speak with Dr. Dietz about, you know, the  
9 conditions the Court is considering changing or imposing upon  
10 him, to determine whether those conditions would, and what  
11 degree, would limit the effectiveness of any exam that's  
12 given.

11:33:51AM13                 Obviously we have not spoken with Dr. Dietz, you know,  
14 since this morning. Since last night. So in that regard  
15 we're at a little bit of a disadvantage here.

11:34:02AM16                 THE COURT: Mr. Bruck.

11:34:04AM17                 MR. BRUCK: Yes, sir. Well, I think the Court should  
18 know that, as the Court will recall, we originally requested  
19 recording, we originally requested a videotape for the  
20 defendant's protection. On reflection, we changed that  
21 request to an audio and opposed a videotape; of course, the  
22 Court ruled that the video should be taken.

11:34:30AM23                 I have to say that we are not completely surprised. We  
24 had hoped that the defendant would accede to the procedure,  
25 and thought there was some reason that he might, because he

1 tends to be compliant in the face of authority, despite some  
2 confounding psychological factors.

11:34:54AM 3 You should know that we have conducted our mental health  
4 evaluation in the booth, because the defendant does not  
5 tolerate contact visits, for reasons we believe have to do  
6 with his neurodevelopmental and psychiatric deficits.

11:35:19AM 7 He has long expressed to us, and I informed the Government  
8 of this when I met with the death penalty committee in  
9 Washington on February 1st, that he believes that his face is  
10 deformed, that his forehead is malshaped, is misshapen. And  
11 he has a -- what seems to us to be a pathological fear of  
12 people seeing his face. He devotes great attention to  
13 controlling any photographs that are taken of his face. And  
14 that photographs that he took himself, he selected out of  
15 hundreds of photos that he took. The famous bowl haircut has  
16 to do with his covering his forehead so that people can't see  
17 what his forehead looks like.

11:36:14AM18 The Court should also be aware that when our  
19 neuropsychologist attempted to use a photographic device to  
20 map his face, the defendant refused to allow that to be done,  
21 even when it was explained to him that it wasn't going to  
22 actually produce photographs, but merely a computer mapping  
23 system, it was still intolerable for his face to be  
24 photographed.

11:36:45AM25 So under all those circumstances, I think what we are

1 dealing with is not willful noncompliance, but actual  
2 symptomatology of a mental disorder.

11:36:58AM 3 THE COURT: Mr. Bruck, did the defendant complete his  
4 evaluation for the defense expert in the noncontact visiting  
5 booth?

11:37:08AM 6 MR. BRUCK: Yes. I should say that he has been seen,  
7 to a limited extent, for physical exams, in a contact setting.  
8 But he has increasingly made clear that this was intolerable,  
9 and that he wasn't going to cooperate with us, to the extent  
10 that our experts wanted to see him in a contact setting. And  
11 at least since the late spring, I don't believe we have had  
12 any contact visitation, although all of our experts would have  
13 much preferred to conduct their evaluations in a contact  
14 setting, but that simply has not been possible.

11:37:48AM15 So I tell the Court this, and the Government, both to  
16 explain that I think what we are running into is not defiance,  
17 but actually the subject matter that, you know, that merits  
18 the pretrial mental health evaluation. And also to  
19 demonstrate that what we have here is not willful disobedience  
20 to the Court's order, but a real lack of capacity to tolerate  
21 the stress that comes with the conditions that have been set  
22 by the Court.

11:38:22AM23 THE COURT: Let me ask you this. The original  
24 discussion regarding the taping, whether video or audio taping  
25 of this, was made at the defense request. Do you now, in

1 light of your client's objections to audio or videotaping,  
2 withdraw that request?

11:38:39AM 3 MR. BRUCK: We do.

11:38:41AM 4 THE COURT: Okay. Now, I want the Government to know  
5 that I have, you know, obviously had dozens of people  
6 evaluated, in which I have returned to me a written report. I  
7 don't see a videotape or anything like that. Recognizing the  
8 prize here is, the purpose here, is to obtain the psychiatric  
9 evaluation, does the Government seriously object to not audio  
10 and videotaping this if, in fact, it produces the desired  
11 psychiatric evaluation?

11:39:21AM12 MR. RICHARDSON: I think it's difficult for us to  
13 answer that question without speaking with Dr. Dietz. I am --

11:39:28AM14 THE COURT: Let me say this. I am a little squirrely  
15 about you guys, now that he's had contact with Roof, having  
16 y'all communicate with him. He has provided me his phone  
17 number, and I am intending to call him to ask him that very  
18 question, which is, can he conduct a valid evaluation in a  
19 noncontact booth. I intend to ask him that question before I  
20 rule.

11:39:54AM21 And so other than that, if he responds that he can -- he  
22 believes he can conduct a valid evaluation, does the  
23 Government object to proceeding without audio or video  
24 recording?

11:40:11AM25 MR. RICHARDSON: No, as long as he is able to conduct

1 the tests that he has indicated are necessary, as well as the  
2 clinical evaluation. And I think it is also important to  
3 advise him of what a noncontact booth is in this context,  
4 which I understand, you know, to require the use of a  
5 hand-held phone to communicate.

11:40:38AM 6 THE COURT: Yeah, he seems to know what it is; he  
7 writes me a letter about it. I have the impression that  
8 Dr. Dietz, this is not his first time inside of a secure  
9 facility.

11:40:52AM10 MR. RICHARDSON: We ultimately defer to Dr. Dietz, I  
11 mean, his ability to conduct a meaningful and effective  
12 evaluation is obviously something I'm not going to second  
13 guess.

11:41:03AM14 THE COURT: Okay. Anything further from either  
15 counsel want to -- because my plan is to adjourn this hearing,  
16 telephone hearing, and I intend to communicate with Dr. Dietz  
17 on the record, court to expert, I'm going to ask him these  
18 questions, and then I intend to rule.

11:41:28AM19 MR. BRUCK: I think I should just mention one thing  
20 to clarify, the professional contact booths do not involve a  
21 hand-held phone. They do involve speaking through a small  
22 sort of opening, voice opening, with no electrical  
23 intermediary between the people on either side.

11:41:53AM24 I will say that Dr. Dietz may well start, and then  
25 complain that it is not an optimal setting. It has not been

1 an optimal setting for us. This is how we have to meet with  
2 our clients, counsel. It has not been an optimal setting for  
3 our experts, and it will not be an optimal setting for  
4 Dr. Dietz, and I regret that. But that's the set-up at the  
5 jail, and that's the best they can do for noncontact  
6 visitation. And I just wanted the Court to be aware of what  
7 it's like.

11:42:23AM 8 THE COURT: Okay. Let me communicate with Dr. Dietz.  
9 And I may actually ask him to go look at this non -- see if we  
10 can arrange for him to evaluate that or let me know if there's  
11 a problem.

11:42:41AM12 But remember here, folks, our goal is to give the jury the  
13 very best information to make a just and fair and right  
14 decision, and that is not accomplished by, A, withholding all  
15 mental health evidence, and B, by trying to have one side --  
16 I'm not going to allow one side, under the rules, we would  
17 result in having no evidence. So we obviously might want to  
18 accommodate a bit -- the word was accede, as if giving up -- I  
19 don't view that that way, I view it as a way of giving my jury  
20 the very best information to make a decision.

11:43:26AM21 So with that, let me adjourn this hearing, and I will  
22 communicate with Dr. Dietz.

11:43:31AM23 Thank you very much. Hearing is adjourned.

11:43:33AM24

11:43:33AM25 (Hearing adjourned at 11:43 a.m.)

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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the stenographically recorded above proceedings.

S/Debra L. Potocki

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Debra L. Potocki, RMR, RDR, CRR

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